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Before the
Federal Communications Commission
Washington, D.C. 20554

FOO-MAIL-LOW

TO: Chief, Audio Division
Media Bureau.

PETITION FOR RULEMAKING.

I, Michael R. Birdsill, hereby request that the Audio Division, Media Bureau, institute a Rulemaking to permit Low Power FM ("LPFM") Applicants who filed LPFM Applications between May 28-June 8, 2000 ("Window I"), and July 28-August 1, 2000 ("Window II") to enter into Settlement Agreements, waiving the monetary limits of Section 73.3525 (a) (3), between two or more Applicants that would allow the following to occur:

1.) While retaining all other aspects of their individual Applications, allow Applicants to "trade" their requested Technical Facilities. This would allow for more creative "Engineering Solutions" to Mutually Exclusive ("MX") Applications or to Applications impacted by the Third-Adjacent Channel Protection Standards imposed by Congress in Dec. 2000 (Pub. L. No. 106-553 114 Stat. 2762, (2000)).

As an Example: Let us assume that my Alma Mater, St. Justine's High School for the Blacksmithing Arts, located in Chrome, California, filed an Application for an LPFM Station during Window I, which requested in the Technical Specifications FM Channel 241 (96.1 MHz). As luck would have it, we have on campus a Bell Tower (built by the Class of 1947) which is 90 feet tall. If we put a pole on top of the Bell Tower, we could

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mount an FM Antenna exactly 100 feet above the ground. The School Board had given their Approval to file the LPFM Application based upon the use of the Bell Tower for the Antenna mounting structure. However, after Congress imposed Third-Adjacent Channel Protection Standards, FM Channel 241 (96.1 MHz) is no longer usable at our campus site. In fact, we would have to build a new tower at least 8 miles Northeast of Chrome, California if we intend to use FM Channel 241. It is not likely that the School Board will approve this change of Antenna site given the cost to develop a new tower site and to relay programming to the site from the campus 8 miles away.

The only other FM Channel usable at our campus is FM Channel 282 (104.3 MHz)-Unfortunately, Chrome Educational Radio, Inc. applied for an LPFM Station using that FM Channel during Window I. FM Channel 282 (104.3 MHz) is fully spaced from all other pertinent FM Channels and could be located anywhere in Chrome, California. Assuming Chrome Educational Radio, Inc. is willing to enter into a Settlement Agreement (and accept a monetary payment for their cooperation), we could Amend our LPFM Application for St. Justine's to specify the use of FM Channel 282 (104.3 MHz) on our campus at the Bell Tower. Chrome Educational Radio, Inc. could Amend their LPFM Application to specify the use of FM Channel 241 (96.1 MHz) at the site 8 miles from Chrome, California.

A similar scenario could be employed for solving MX Applications, where one party to the MX situation could trade for a Non-MX FM Channel, which would allow all parties to move

forward in the Application process.

2.) Applicants could easily and creatively "merge" their discreet ownership, allowing the newly "merged" Applicant to select the Technical Facilities specified in one of the formerly discreet Applications (possibly the one that meets Third-Adjacent Protection or is Non-MX'ed), and voluntarily give up (dismiss) the Technical Facilities specified in the second formerly discreet Application.

As an Example: Let us now assume that the Chrome Educational Radio, Inc. ("CERI") LPFM Application to use FM Channel 282 (104.3 MHz) turned out to be slightly Short-Spaced to a Co-Channel LPFM Application at Mulberry, California. Fortunately, in Nov. 2000, an alternate Antenna site at a distance of 0.5 kilometers from the original site in CERI's Application was secured--a Minor Change for LPFM Stations--which would solve the MX situation with the Mulberry Application.

However, in Dec. 2000, Congress imposed the Third-Adjacent Channel Protection Standards--which the CERI Application could not comply with and still provide a useable signal to Chrome, California. The only FM Channel in the area that would provide service to Chrome and be fully Spaced to pertinent FM Channels is FM Channel 241 (96.1 MHz), which is the FM Channel St. Justine's High School for the Blacksmithing Arts has specified in their LPFM Application.

Assuming St. Justine's is willing to enter into a Settlement Agreement (and accept a monetary payment for their cooperation), CERI and St. Justine's could easily "merge" their ownership

and specify FM Channel 241 (96.1 MHz) for their joint LPFM Station-dismissing any claim to FM Channel 282 (104.3 MHz). As it turns out, having CERI provide part of the daily programming for the LPFM Station is really NOT a negative event-St. Justine's main goal in building an LPFM Station was to Broadcast their lively 3 hour Daily Talk Show "Farrier's Forum-Let Your Horse Walk the Walk"-formerly heard on the Chrome Cable TV system, (before the Cable Company pulled the plug on FM Cable Radio carriage). St. Justine's was actually considering filling in the rest of the Broadcast Day with old Barry Manilow records.

PRECEDENCE FOR WAIVING THE MONETARY LIMITS OF SECTION 73.3525

(a) (3).

The Commission has, at various times in the past, waived the monetary limits of Section 73.3525 (a)(3) with regard to Settlement Agreements between "Closed" groups of Broadcast Applicants. "Closed" being defined as the Commission will not accept additional Applications for any of these groups. In the instant case, LPFM Applicants who filed during Window I or Window II.

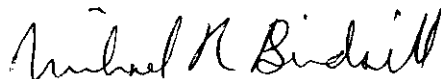
The most recent example of this type of Commission action was March 22, 2002, when the Commission released DA 01-79, "Supplements and Settlements to Pending Closed Group of Noncommercial Broadcast Applications". Similar action now by the Commission with respect to LPFM Applicants who filed during

for Window I and Window II would facilitate Settlements among these Pending Applications using the two Proposals presented in this PETITION FOR RULEMAKING.

CONCLUSION.

I am aware of the LPFM Amendment Window recently announced by the Commission (DA 02-2178, Sept. 9, 2002). I request that this Amendment Window be rescheduled in order that the Proposals/Settlement Agreements envisioned by this PETITION FOR RULEMAKING may be part of that Process, thereby allowing those LPFM Applicants who may have no Options with regard to solving a Third-Adjacent Channel Protection problem, the opportunity to "trade" Technical Facilities with another LPFM Applicant or to easily "merge" with another LPFM Applicant whose Technical Facilities conform with the Third-Adjacent Channel Protection Standards mandated by Congress.

Respectfully Submitted,



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